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November 8, 2021

Via FOIA Online: kreilly@hannonlawgroup.com

Ms. Kieran Reilly
Hannon Law Group, LLP
Counselors and Attorneys at Law
333 8th Street, NE
Washington, DC 20002

Dear Ms. Reilly:

SUBJECT: FREEDOM OF INFORMATION ACT REQUEST DON-NAVY-2021-007559

   This responds to your Freedom of Information Act (FOIA) request on behalf of Lt. Stanley Nichols in which you seek the following information regarding the transfer of the operation of Joint Base Anacostia-Bolling (JBAB) from the Department of the Navy to the Department of the Air Force:

   1. Any and all records regarding the planning and execution of the transfer of police officers located at JBAB employed by the Department of the Navy, including GS-0083-80 police officers, to the Department of the Air Force from June 2020 through September 2020;

   2. Any and all records regarding the planning and execution of the transfer of police officers located at JBAB employed by the Department of the Navy, including GS-0083-80 police officers, to other Naval installations from June 2020 through September 2020;

   3. Any and all documents detailing the position description and job duties of all types and ranks of GS-0083-80 police officers assigned to JBAB employed by the Department of the Navy; and

   4. Any and all presentations, and/or other material detailing the impact of the change in operation of JBAB from the Department of the Navy to the Department of the Air Force and presented to any police officers located at JBAB, including GS-0083-80 police officers, who were subject to any change in employment as a result of the change in the operation of JBAB from June 2020 through September 2020.

   Your request was assigned file number DON-NAVY-2021-007559 and has been processed in accordance with the FOIA, 5 U.S.C. § 552. After clarifying details with you regarding your request, we determined that we had a perfected request as of August 19, 2021.

   A search for the requested information identified <u>774</u> pages of responsive documents, and they are enclosed. This is a partial release. Within these documents, redactions have been made to

protect information that is exempt from release under the FOIA. Information was withheld under exemptions (b)(5) and (b)(6) of the FOIA.

Exemption (b)(5) allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party...in litigation with the agency." 5 U.S.C. § 552(b)(5). Exemption (b)(5) incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges.

The attorney-client privilege protects "confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice" and is not limited to the context of litigation. *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977). Moreover, although it fundamentally applies to confidential facts divulged by a client to his/her attorney, this privilege also encompasses any opinions given by an attorney to his/her client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect confidential client-supplied information. *See Elec. Privacy Info. Ctr. v. United States Dep't of Homeland Sec.*, 384 F. Supp. 2d 100 (D.D.C. 2005). With regard to your request, the information that has been withheld under the attorney-client privilege of exemption (b)(5) constitutes confidential communications between agency attorneys and agency clients related to legal matters for which the client sought professional legal assistance and services.

The deliberative process privilege protects the decision-making process of government agencies and encourages the "frank exchange of ideas on legal or policy matters" by ensuring agencies are not "forced to operate in a fish bowl." *Mead Data Cent., Inc.* at 256. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that "reflect the give-and-take of the consultative process" and may include "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency." *Coastal States Gas Corp. v. United States Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). For your request, the information that has been withheld under the deliberative process privilege is both predecisional and deliberative and does not contain or represent formal or informal agency policies or decisions. Release of such materials would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions.

Exemption (b)(6) allows an agency to withhold "personnel and medical files and similar files" if disclosure would constitute a "clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6). The phrase "similar files" covers any agency records containing information about a particular individual that can be identified as applying to that individual. *See United States Dep't of State v. Washington Post Co.*, 456 U.S. 595 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. *See United States Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989). We identified privacy interests in the responsive records in this case and, after balancing those privacy interests with

public interests, we determined that it is necessary to withhold certain information under exemption (b)(6).

For fee purposes, we determined that you are categorized as an "other" requester under the FOIA and DoD regulations (32 C.F.R. § 286.12). Other requesters are charged search and duplication fees, but the first two hours of search and 100 pages of duplication are provided free of charge. Additionally, when a DoD Component fails to meet the time limits in which to respond to a request, except in limited situations, it may not charge search fees. Based upon the processing timeline for this request, I find that any associated search fees must be waived. There are no duplication fees.

As your request is partially denied, you are advised of your right to appeal this determination by submitting an appeal to the Office of the Judge Advocate General (Code 14) using FOIA online at https://foiaonline.gov (the preferred method), or in writing to: Office of the Judge Advocate General (Code 14), 1322 Patterson Ave, SE, Ste 3000, Washington Navy Yard, DC 20374-5066. Your appeal must be postmarked within 90 calendar days from the date of this letter. As the requester, you have the burden of proving timely submission of any appeal. A copy of your initial request and this letter should accompany the appeal. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

For this determination, you have the right to seek dispute resolution services from the Department of the Navy FOIA/PA Public Liaison, Mr. Christopher Julka, at christopher.a.julka@navy.mil or (703) 697-0031. You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA/PA Ombudsman's office, at (202) 741-5770 or ogis@nara.gov.

If you have any questions regarding the processing of your request, you may contact the Naval District Washington FOIA/PA liaison at CNI.NDWFOIA@navy.mil.

Sincerely,

J. M. KENNEDY
Commander, U.S. Navy
Judge Advocate General's Corps

Enclosure